



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,425	10/20/2003	Gordon Bremer	061606-1671	2794

24504 7590 09/10/2007  
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP  
100 GALLERIA PARKWAY, NW  
STE 1750  
ATLANTA, GA 30339-5948

EXAMINER
----------

TSE, YOUNG TOI

ART UNIT	PAPER NUMBER
----------	--------------

2611

MAIL DATE	DELIVERY MODE
-----------	---------------

09/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/689,425

Applicant(s)

BREMER ET AL.

Examiner

YOUNG T. TSE

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-16 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-11, 13-16, 18-20 and 22 is/are rejected.
- 7) ☒ Claim(s) 12, 21 and 23-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed on June 20, 2007 have been fully considered but they are not persuasive.

Regarding to claims 2 and 14, Applicants argue that each of the independent claims 2 and 14, including the newly added claim 22, includes a step or means of negotiating, with a DSL modem, a value or criteria for a first performance parameter to overcome the rejection under 35 102(b) as being anticipated by Goldstein. The examiner respectfully disagrees, Goldstein discloses modem1 and modem 2 in Figure 1 wherein each modem comprises a transmitter section 34a or 34b and a receiver section 38a or 38b for negotiating, for example, a desired power level or a corrective signal between the transmitter section 34a or 34b and the receiver section 38a or 38b. See column 2, lines 46-56 and column 5, lines 44-64.

Regarding claims 5, 7, 16 and 18, Applicants argue that Goldstein fails to disclose, teach, or suggest the second performance parameter is transmit data rate. The examiner respectfully disagrees since a data rate is based on signal power/noise power as defined in equation 2, on page 6, paragraph [0029] of the instant application. Further, data rates or error rates are used and stored in the memory 32a or 32b and the microprocessor 30a or 30b conducts mathematical and logical operations in order for the receiving modem to adjust the transmitting power of the transmitting modem.

Art Unit: 2611

Regarding claim 9, wherein the error rates are at different power levels. See column 3, lines 9-24 and column 9, lines 28-58.

2. Applicant's arguments, see page 9, filed on June 20, 2007, with respect to 35 U.S.C. 112, first paragraph have been fully considered and are persuasive. The rejection of claims 2-13 has been withdrawn.

3. Applicant's arguments, see pages 14 and 17, filed on June 20, 2007, with respect to 35 U.S.C. 102(b) have been fully considered and are persuasive. The rejection of claims 12 and 21 has been withdrawn.

#### ***Claim Objections***

4. Claims 18-19, 21 and 27 are objected to because of the following informalities:

In line 1 of both claims 18 and 19, "claim 17" should be "claim 14" since claim 17 has been cancelled.

In claim 21, line 3, "the DSL modem" should be "the transmitting DSL modem".

In claim 27, line 1, "claim 25" should be "claim 26" because claim 27 is a method claim but claim 25 is an apparatus claim.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 2611

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 2-11, 13-16, 18-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldstein U.S. Patent No. 5,265,151.

Regarding claims 2, 14 and 22, Goldstein discloses a modem 1 and a modem 2 in Fig. 1, wherein each modem comprises a transmitting modem 34a or 34b for transmitting a transmission power (first parameter) to a receiving modem 38a or 38b for receiving the transmission power, determining a signal/noise ration for the received transmission power, and requesting adjustment of the transmission power (second parameter) from the microprocessor 30a or 30b stored from the memory 32a or 32b if the transmission power is below or above a predetermined transmission power level in order to increase or decrease the transmission power. See the abstract, col. 2, lines 18-31, col. 5, line 29 to col. 7, line 10, col. 7, lines 45-56, and col. 8, line 46 to col. 9, line 58.

Regarding dependent claims 3-11, 13, 15-16 and 18-20, the transmission power includes transmission power level and the signal/noise ration is the transmission data rate. All the claimed subject matter of claims 3-13 and 15-21 are described in the abstract, col. 2, lines 18-31, col. 5, line 29 to col. 7, line 10, col. 7, lines 45-56, and col. 8, line 46 to col. 9, line 58.

***Allowable Subject Matter***

7. Claims 12, 21 and 23-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 27 would be allowable if rewritten or amended to overcome the objection set forth in this Office action.

***Conclusion***

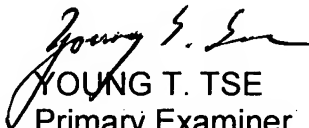
9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOUNG T. TSE whose telephone number is (571) 272-3051. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad H. Ghayour can be reached on (571) 272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
YOUNG T. TSE  
Primary Examiner  
Art Unit 2611